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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TUCKER, PHILIP C

ART UNIT	PAPER NUMBER
1712	h

DATE MAILED: 12/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 927619
Examiner P. TUCKER
Applicant(s) PATEL
Group Art Unit 1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- Responsive to communication(s) filed on _____.
- This action is **FINAL**.
- Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- Claim(s) 1 - 35 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 1 - 8, 10, 12, 14 - 31, 33, 34 is/are rejected.
- Claim(s) 9, 11, 13, 32, 35 is/are objected to.
- Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - All Some* None of the CERTIFIED copies of the priority documents have been received.
 - received in Application No. (Series Code/Serial Number) _____.
 - received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). 2, 3 Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

Art Unit: 1712

DETAILED ACTION

1. There were 2 claims numbered 13 in the application, thus the second claim 13 through claim 34 have been renumbered as claims 14-35 under Rule 1.126.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 17 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 4, 17 and 25, the phrase "or other such" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or other such"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Art Unit: 1712

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8, 10, 12, 14-31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jakobson et al. (5466719).

Jakobson teaches polyglycerol fatty acid esters which comprise esters of the diglycerol and triglycerol type (see abstract). Jakobson teaches that such esters may be used in water in oil systems, and in drilling fluids (column 1, lines 14-18 and column 11, lines 1-4). Jakobson differs from the present invention in that a specific example of a drilling fluid, and a weighting agent is not disclosed. However, it would be obvious to one of ordinary skill in the art to utilize the polyglycerol fatty acids of Jakobson to form a water in oil drilling fluid, given the teaching of Jakobson that such esters are useful for forming drilling fluids, and water in oil emulsions. The use of weighting agents, such as barite and calcium salts in drilling fluids are universally known, and would be obvious to one of ordinary skill in the art for use in the drilling fluids taught by Jakobson.

Art Unit: 1712

6. Claims 9, 11, 13, 32 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Tucker whose telephone number is (703) 308-0529. The examiner's normal working hours are 7:30am-4:00pm, Monday-Friday. If necessary SPE Robert Dawson may be contacted at 703-308-2340. For inquiries of a general nature call the receptionist at 703-308-0651. The group FAX no. is 703-872-9310. The **after final** fax no. is 703-872-9311.

PCT-2693
December 13, 2002



PHILIP C. TUCKER
ART UNIT 1712